86-1575

No. 86-



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1986

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DEPARTMENT OF BANKING AND CONSUMER FINANCE OF THE STATE OF MISSISSIPPI,
*Petitioner,*

v.

ROBERT L. CLARKE, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, and DEPOSIT GUARANTY NATIONAL BANK,
*Respondents.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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## QUESTION PRESENTED

Section 36(c) of the McFadden Act, codified in the National Bank Act at 12 U.S.C. § 36(c) (1952), provides that a national bank may branch in a state only if it meets the branching restrictions imposed by that state's law on state banks. Section 36(h) of the McFadden Act defines a state bank, again by reference to state law.

The question presented is whether a national bank may engage in branching that is prohibited by state law for state banks, on the ground that such branching is permitted for state savings and loan institutions, thereby placing state banks in a position of competitive inequality with national banks in the matter of branching.

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioner, Department of Banking and Consumer Finance of the State of Mississippi, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on February 9, 1987.

## OPINIONS BELOW

The opinion of the Court of Appeals is *Department of Banking and Consumer Finance of the State of Mississippi v. Clarke*, 809 F.2d 266 (5th Cir. 1987), and appears in the appendix ("App.") beginning at 35a. The opinion of the District Court for the Southern District

of Mississippi is *Department of Banking and Consumer Finance of the State of Mississippi v. Selby*, 617 F. Supp. 566 (S.D. Miss. 1985), and appears at App. 21a. The decision of the Comptroller of the Currency is unreported and appears at App. 1a.

## JURISDICTION

The final judgment of the Court of Appeals was entered on February 9, 1987. App. 44a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## STATUTES INVOLVED

Pertinent statutory provisions are set forth in the Statutory Appendix, *infra*, pp. 15-17.

## STATEMENT

This case arises out of a decision by the Comptroller of the Currency to permit Deposit Guaranty National Bank of Jackson, Mississippi ("Deposit Guaranty") to established a branch in Gulfport, Mississippi. App. 20a. Federal law permits national banks to branch in a state only to the extent that state law in the state permits state banks to branch. This Congressional requirement was established by the McFadden Act of 1927, codified in the National Bank Act at 12 U.S.C. § 36 ("The McFadden Act"), which says in pertinent part:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches . . . at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

12 U.S.C. § 36(c) (1952). This Court has held that the purpose of this statutory provision is to "place national and state banks on a basis of 'competitive equality' insofar as branch banking [is] concerned." *First National Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966).

In making his decision in this case, the Comptroller recognized that the Mississippi statute governing its state chartered banks, which restricted such branching to within 100 miles of the bank's main office, would preclude the branching requested by Deposit Guaranty, to be located more than 100 miles from its main office. App. 1a-2a. *See* Miss. Code Ann. §§ 81-7-5 and 81-7-7 (1972). The Comptroller noted, however, that under a different section of the Mississippi Code relating to the incorporation and regulation of state savings and loan associations, such associations are authorized to branch without a territorial limitation and thus may branch statewide. App. 2a. *See* Miss. Code Ann. § 81-12-175 (Supp. 1986). The Comptroller did not then evaluate state law further. Instead, he looked to the definition of "state bank" in Section 36(h) of the McFadden Act:

> The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

12 U.S.C. § 36(h) (1927). The Comptroller concluded that the language of Section 36(h) establishes a federal "functional" definition of "state bank" (App. 4a-14a), and that under that definition savings and loans in Mississippi compete to some extent with banks,[1] although they

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[1] In making this determination, the Comptroller relied "chiefly" upon a consultant study and subsequent report prepared for Deposit Guaranty by Golembe Associates, Inc. From that study and report, the Comptroller concluded that Mississippi savings and loans offer certain services in competition with commercial banks sufficient to

are not chartered as banks and although they are statutorily more restricted than banks in the services they can provide to the public. The Comptroller, therefore, concluded that the McFadden Act permits Deposit Guaranty to branch to the extent that Mississippi allowed branching by state savings and loans, i.e., without geographic restrictions, and, on July 9, 1985, the Comptroller gave Deposit Guaranty approval to open the requested branch in Gulfport.

The branching the Comptroller permitted for Deposit Guaranty would not have been permissible for any of Mississippi's state-chartered banks and would have put those state-chartered banks at a competitive disadvantage vis-a-vis Deposit Guaranty in the scope of permissible branching, an outcome the Department contends the McFadden Act was intended to preclude. Consequently, the day after the Comptroller issued his decision, the Department of Banking and Consumer Finance of the State of Mississippi brought this action against the Comptroller and Deposit Guaranty in the federal district court for the Southern District of Mississippi, challenging the Comptroller's decision under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* The action was brought for a declaratory judgment that the Comptroller's decision was unlawful, and therefore null and void, and preliminary and permanent injunctive relief prohibiting the Comptroller from issuing a certificate of authority for the proposed branch and prohibiting Deposit Guaranty from establishing or operating the branch. The court issued a preliminary injunction on July 16, 1985.

The Department of Banking and Consumer Finance of the State of Mississippi and several state bank intervenors (hereinafter collectively referred to as "Department") contended that the Comptroller was ignoring the express language of Sections 36(c) and 36(h) of the

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bring them into the "business of banking." App. 18a-20a. *But see infra* note 4 and accompanying text.

McFadden Act that incorporates state law, and was ignoring Congressional intent, demonstrated in the legislative history of the Act and confirmed by this Court,[2] to maintain competitive equality between state and national banks in the matter of branching. The Department noted that under Section 36(h) the term "State bank" includes only those "institutions carrying on the banking business under the authority of State law," and further contended that savings and loan associations did not fall under the provision of Mississippi law governing the chartering and operating of state-chartered banks. *See* Miss. Code Ann. § 81-7-1 *et seq.* (1972). In addition, state savings and loans are subject to limitations that are not applicable to commercial banks (such as Deposit Guaranty). *See* Miss. Code Ann. § 81-12-1 *et seq.* (Supp. 1986). The Department further urged that the absence of any reference to savings and loans in the McFadden Act or in the legislative history dealing with the branching restrictions of the Act reflects the long-standing Congressional intent that savings and loans be treated separately from banks. It was argued that as a result, neither the language of the Act nor its legislative history provide support for the proposition that Congress ever intended the McFadden Act to permit competitive inequality between state banks and national banks in the matter of branching by yoking the branching powers of national banks to those accorded by a state or by Congress to savings and loan associations.[3] The Department pointed out that, consist-

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[2] *See First Nat'l Bank in Plant City v. Dickinson*, 396 U.S. 122 (1969); *First Nat'l Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252.

[3] In 1933, when Congress amended the McFadden Act in the Banking Act of 1933, Congress passed a separate statute authorizing the establishment of federal savings and loans. Home Owners' Loan Act of 1933, *codified at* 12 U.S.C. §§ 1461-1470 ("HOLA"). Neither statute indicated any interrelationship between the branching activities of the two types of institutions. In fact, the branching of savings and loans has been determined to be an implied power

ent with this historically separate treatment of banks versus savings and loans, the recently enacted Garn-St. Germain Depository Institutions Act of 1982, while expanding the powers of federal savings and loans, continued to significantly circumscribe the powers of savings and loans in comparison to the powers of banks and to maintain the traditional differences between banks and savings and loans.[4]

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in the statute to be implemented by the HOLA-created Federal Home Loan Bank Board ("FHLBB"). *North Arlington Nat'l Bank v. Kearney Federal Savings & Loan Ass'n*, 187 F.2d 564 (3d Cir.), *cert. denied*, 342 U.S. 816 (1951); *First Nat'l Bank of McKeesport v. First Federal Savings & Loan Ass'n of Homestead*, 225 F.2d 33, 35 (D.C. Cir. 1955). Further, banks do not have the right to protest savings and loan branching on the grounds that they compete with those institutions (*Union Nat'l Bank of Clarksburg v. Home Loan Bank Board*, 233 F.2d 695 (D.C. Cir. 1956)), and the impact of savings and loan branching on banks need not be considered by the FHLBB. *First Nat'l Bank of Baudette v. Savings & Loan Ass'n of Bemidji*, 670 F.2d 796 (8th Cir. 1982). Moreover, in contrast to the McFadden Act restrictions on national bank branching, the FHLBB may permit federal savings and loans to branch regardless of state restrictions on state savings and loans. *Independent Bankers Ass'n of America v. FHLBB*, 557 F. Supp. 23 (D.D.C. 1982). Thus, there is no evidence of congressional intent to link the branching authority of federal and state savings and loan associations, much less the branching authority of such associations to banks.

[4] The Garn-St. Germain Depository Institutions Act of 1982 is codified at 12 U.S.C. § 1461 *et seq.* In anticipation of this Act, Mississippi enacted a law that automatically expands the powers of Mississippi savings and loans with the expanded powers of federal savings and loans. Miss. Code Ann. § 81-12-49(r) (Supp. 1986). The powers of savings and loans continue to be restricted, in comparison to banks, in key respects. For example, under 12 U.S.C. § 1464(b) (1983), a federal savings and loan association may accept demand deposits *only* from persons or organizations having a business, corporate, commercial, or agricultural loan relationship with the savings and loan association, or from a commercial, corporate, business or agricultural entity for the sole purpose of effectuating payments thereto by a non-business customer. In contrast, there are *no* limitations on the ability of a national or Missis-

The district court entered final judgment for the Department and issued a permanent injunction. The Comptroller and Deposit Guaranty appealed to the Fifth Circuit Court of Appeals. A panel of that court reversed the district court.

## REASONS FOR GRANTING THE WRIT

### I. The Decision Below is in Conflict with the Decisions of Two Other Federal Courts of Appeals

Both the Ninth and Eighth Circuits have held that the McFadden Act prohibits national banks from branching in a state to a greater degree than the state-chartered banks in that state, in reliance upon the branching authority granted to *other* state financial institutions. As a result, the decisions of the Ninth Circuit and Eighth Circuit are in direct conflict with the decision of the Fifth Circuit in this case. Although the applicability of these decisions was vigorously argued before the

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sippi commercial bank to accept demand deposits. *See* 12 U.S.C. § 24 (1984); Miss. Code Ann. § 81-5-1 (1972). Similarly, *compare* 12 U.S.C. § 1464(c)(1)(R) (1982) (regarding commercial loans) *with* 12 U.S.C. § 24 and Miss. Code Ann. § 81-5-1; *compare* 12 U.S.C. § 1464(c)(2)(B) (1982) (regarding consumer loans) *with* 12 U.S.C. § 24 and Miss. Code Ann. § 81-5-1; *compare* 12 U.S.C. § 1464(c)(2)(A) (1982) (regarding commercial leasing) *with* 12 U.S.C. § 24 and Miss. Code Ann. § 81-5-1; *compare* 12 U.S.C. § 1464(c)(1)(B) (1982) (regarding commercial real estate loans) *with* 12 U.S.C. § 24 and Miss. Code Ann. § 81-5-1. The recently enacted changes were intended to and have been used by savings and loans to strengthen their ability to perform their traditional housing financing role, rather than as a vehicle for transforming savings and loan institutions into commercial banks. Senator Garn explained that the Garn-St. Germain Act was intended "to provide additional asset flexibility and earnings opportunities to thrift institutions in the long-term . . . . By limiting such powers, the legislation maintains the traditional distinctions between commercial banks and thrift institutions." 128 Cong. Rec. S12213 (daily ed. Sept. 24, 1982).

court below, its opinion does not even mention, much less discuss, these decisions.

In *Mutschler v. Peoples National Bank of Washington*, 607 F.2d 274 (9th Cir. 1979), the Comptroller had approved a relocation of a branch of a national bank in Washington state which the circuit court determined would have been illegal for a state-chartered bank. The national bank and the Comptroller relied on the same arguments presented by respondents in this case—that even if state-chartered banks are precluded from such branching, national banks are not if another state financial institution, in that case a mutual savings bank, could engage in such branching. *Id.* at 279. The Ninth Circuit concluded that the state law governing mutual savings banks in Washington did not provide a basis for branch relocation by a national bank. *Id.* at 279-80.

The reasoning of the Ninth Circuit is directly applicable here and puts the Ninth Circuit squarely at odds with the Fifth Circuit decision in this case. First, the court concluded that the references to state law in Sections 36(c) and 36(h) of the McFadden Act require that state law be used to determine the definition of "state bank." *Id.* at 279. Then the court concluded that, under Washington state law, a mutual savings bank is not a "state bank" and that, therefore, the branching permitted Washington state mutual savings banks could not be used to justify branching by a national bank. *Id.* at 279-80. Finally, the court concluded that even if a mutual savings bank in Washington were a "state bank" for purposes of the McFadden Act, the requirement of Section 36(c) of the McFadden Act that national bank branching rights are "subject to the restrictions as to location imposed by the law of the State on State banks" means that a national bank may not avail itself of the branching right of such a mutual savings bank unless the national bank satisfies all of the provisions of the state statute governing mutual savings banks. *Id.* at 280.

Thus, in order to take advantage of the branching privilege afforded state mutual savings banks, the national bank (like a state-chartered institution) would also have to meet the requirements imposed as a condition for the establishment of a mutual savings bank.

Two years earlier, in *Dakota National Bank & Trust Co. v. First National Bank & Trust Co. of Fargo*, 554 F.2d 345 (8th Cir.), *cert. denied*, 434 U.S. 877 (1977), the Comptroller had determined that a national bank should be able to engage in branching that state law would not permit for state-chartered banks, because in the Comptroller's view, the Bank of North Dakota, a state-owned bank, had no branching restrictions. The court decided that Section 36(h) of the McFadden Act does not permit a national bank to branch in reliance on the branching privileges enjoyed by the state itself in its banking endeavors when such branching is prohibited for private state-chartered banks. The court concluded that to hold otherwise would be inimical to the policy of competitive equality between private banks that underlies the McFadden Act. *Id.* at 356.[5]

## II. The Decision Below is Contrary to Decisions of this Court

This Court has already addressed the issue of the extent to which state law should be applied in determining

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[5] The decision below is also in conflict with decisions of two district courts. *See First Nat'l Bank & Trust Co. of Okmulgee v. Empie*, Nos. 78-296-C and 79-315-C (E.D. Okla. Nov. 15, 1982 and Dec. 17, 1982) (trust companies are "separate and distinct creations from state banks . . . not chartered as state banks . . . and do not carry on the banking business under authority of state law."); *State Chartered Banks in Washington v. Peoples Nat'l Bank of Washington*, 291 F. Supp. 180, 198-99 (W.D. Wash. 1966) (national bank could not take advantage of the branching privileges afforded state-chartered mutual savings banks unless it met all of the requirements of the state statute governing mutual savings banks).

whether a national bank may engage in branch banking under the McFadden Act.

In *First National Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252, the Comptroller argued, as the Comptroller argues in this case, that he is not confined by state branching restrictions. The Comptroller contended that since the state permitted branching by banks by taking over an existing bank, First National Bank could branch as well *and* would not be confined in doing so to taking over an existing bank. The Comptroller's argument was that, under the McFadden Act, state law governs only "whether" and "where" branches may be located, but not the "method" of branching. This Court rejected the Comptroller's selective use of the state statute, explaining "[i]t is a strange argument that permits one to pick and choose what portion of the law binds him" (*id.* at 261), and concluding that restrictions that are part and parcel of the state law governing branching are "absorbed by the provisions of §§ 36(c)(1) and (2). . . ." *Id.* at 261-62. This Court explained further that when a state expresses the conditions under which it will permit branching, "it expresses as much 'whether' and 'where' a branch may be located" as when it states an explicit geographic prohibition (*id.* at 262), and "[i]t is not for us to so construe the Acts as to frustrate this clear-cut purpose [of achieving "competitive equality" in branch banking] so forcefully expressed by both friend and foe of the legislation at the time of its adoption." *Id.* at 261.

In accordance with the decision of the Court in *Walker*, the Mississippi state law provisions regarding state bank branching are "absorbed" into the McFadden Act. Since the state law does not permit "state banks" to engage in the branching sought by Deposit Guaranty, Deposit Guaranty is precluded from that branching as well. *See* Miss. Code Ann. § 81-7-7 (Supp. 1986). Nor does Deposit Guaranty meet the Mississippi requirements for designa-

tion as a savings and loan, as it must to be eligible to branch under the provisions of the Mississippi statute governing savings and loans. *See* Miss. Code Ann. § 81-12-1 *et seq.* (Supp. 1986). In short, the decision below rests upon precisely the kind of selective use of state statutes that this Court found impermissible in *Walker*.

*First National Bank in Plant City v. Dickinson*, 396 U.S. 122, dealt with the issue of whether an armored car messenger service and other off-premises receptacles used by a national bank in Florida for the receipt of packages containing cash or checks for deposit constituted branch banks under the definition of a branch in Section 36(f) of the McFadden Act, 12 U.S.C. § 36(f) (1927). The Comptroller, using his interpretation of the federal definition of "branch," approved the national bank's use of off-premises receptacles. This interpretation would have placed state banks in Florida at a competitive disadvantage vis-a-vis national banks, since Florida laws prohibited such branch banking by state banks. *Id.* at 124-25, 130-31, 138. Unlike Section 36(h), Section 36(f) makes no reference to state law. Even so, this Court held that the federal definition of Section 36(f) was to be applied in a manner that would implement the underlying purpose of the branching requirements of the McFadden Act—to assure competitive equality. Echoing the point made earlier in *Walker*, this Court emphasized in its closing statement that "the congressional policy of competitive equality with its deference to state standards [is not] open to modification by the Comptroller of the Currency." 396 U.S. at 138.

### III. The Question Involved Is of Broad Significance, Affecting Over Twenty States, and Therefore Has National Impact

Twenty-two states, including Mississippi, grant savings and loan associations broader branching rights than

banks.[6] Under the reasoning of the court below, the state-chartered banks of all of these states would be subjected

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[6] For Arkansas, *compare* Ark. Stat. Ann. § 67-360 (1980) *with* Ark. Stat. Ann. § 67-1866 (1980); for Colorado, *compare* Colo. Rev. Stat. § 11-6-101 (Supp. 1983) *with* Colo. Rev. Stat. § 11-41-120 (1973); for Georgia, *compare* Ga. Code Ann. § 7-1-601 (1982) *with* Ga. Code Ann. § 7-1-777 (1982); for Illinois, *compare* Ill. Ann. Stat. Ch. 17 § 3010 (1981) *with* Ill. Ann. Stat. Ch. 17 § 3301-9 (Supp. 1986); for Indiana, *compare* Ind. Code Ann. § 28-2-13-1 (1986) *with* Ind. Code Ann. § 28-4-3-1 *et seq.* (1986); for Kansas, *compare* Kan. Stat. § 9-1111 (Supp. 1986) *with* Kan. Stat. § 17-5225 (Supp. 1986); for Kentucky, *compare* Ky. Rev. Stat. § 287.180 (Supp. 1986) *with* Ky. Rev. Stat. § 289.061 (1981); for Michigan, *compare* Mich. Stat. Ann. § 487.471 (Supp. 1986) *with* Mich. Stat. Ann. § 491-522 (Supp. 1986); for Missouri, *compare* Mo. Ann. Stat. § 362.105 (Supp. 1987) *with* Mo. Ann. Stat. § 369.329 (Supp. 1987); for New Mexico, *compare* N.M. Stat. Ann. § 58-5-3 (Supp. 1985) *with* N.M. Stat. Ann. § 58-10-17 (Supp. 1983); for Ohio, *compare* Ohio Rev. Code Ann. § 1111.03 (Supp. 1985) *with* Ohio Rev. Code Ann. § 1151.05 (1968); for Oklahoma, *compare* Okla. Stat. Ann. Tit. 6 § 501 (Supp. 1987) *with* Okla. Stat. Ann. Tit. 18 § 381.24 (1986); for Pennsylvania, *compare* Pa. Stat. Ann. Tit. 7 § 904 (Supp. 1986) *with* Pa. Stat. Ann. Tit. 7 § 6020-53 (Supp. 1986); for Tennessee, *compare* Tenn. Code Ann. § 45-2-614 (Supp. 1985) *with* Tenn. Code Ann. § 45-3-301 *et seq.* (1980); for Wisconsin, *compare* Wis. Stat. § 221.04 (1982) *with* Wis. Stat. §§ 215.03(8) and 215.13(39) (Supp. 1986). For Iowa, state bank branching is restricted by Iowa Code Ann. § 524-120 (Supp. 1986), but there is no restriction on savings and loan branching. *See* Atty. Gen. Op. (Smith) Nov. 5, 1973. For Minnesota, State bank branching is restricted by Minn. Stat. Ann. §§ 47.52 and 48.34 (Supp. 1987), but there is no restriction for state savings and loans. *See* Minn. Stat. Ann. § 51A.58 (Supp. 1987). For Nebraska, state bank branching is restricted by 1986 Neb. Laws 2d Sess. § 8-157, but there is no restriction for state savings and loans. *See First Federal Savings & Loan Ass'n. of Lincoln v. Dept. of Banking*, 192 N.W.2d 736 (1971). For North Dakota, state bank branching is restricted by N.D. Cent. Code § 6-03-13.1 (Supp. 1985), but no statute restricts state savings and loan branching. For Texas, state bank branching is restricted by 1986 Tex. Sess. Law Serv. Art. 342-903 (Vernon), but no statute restricts state savings and loan branching. For Wyoming, state bank branching is restricted (*see* 1986 Wyo. Sess. Laws § 13-4-203(c)-(e)), but state savings and loan branching is not. Wyo. Stat. § 13-7-102 (1977).

to competition from national banks with broader branching privileges, or, to prevent that inequity, the state legislatures of these states would be forced to expand branching privileges for state-chartered banks. This is contrary to the fundamental purpose of the McFadden Act to maintain competitive equality between state and national banks in the matter of branching. The McFadden Act cannot be construed expansively to accommodate national banks, in violation of this purpose:

> The branch banking provisions of the McFadden . . . Act represented the minimum of concession which the anti-branch bank forces were willing to make, and its general purpose was to stifle the development of branch banking and to freeze it in its status quo.

J. Chapman & R. Westerfield, *Branch Banking* 108 (1980 reprint), *quoted in Clarke v. Securities Industry Association*, —— U.S. ——, 107 S. Ct. 750, 764 n.3 (1987) (Stevens, J., concurring). In recognition of this statutory intent, this Court has refused to countenance what it has previously described as the Comptroller's "systematic attempt to secure for national banks branching privileges [a state] denies to competing state banks." *First National Bank in Plant City v. Dickinson*, 396 U.S. at 138.

The Comptroller's unjustifiably expansive interpretation of the McFadden Act, one that has been attempted and ultimately rejected in four previous cases, has the potential to impose sweeping change in the nature of banking in a large number of states. In view of the language and legislative history of the McFadden Act, and the existing case law, such a sweeping change in the way the Act has been construed should not be imposed by administrative action without a full review by this Court.

As this Court has explained with respect to another banking statute, if the statute falls short of providing the safeguards necessary to protect the public interest, that is a problem for the legislature, not a federal gov-

ernment administrator, or the courts, to address. *Board of Governors v. Dimension Financial Corp.*, —— U.S. ——, 106 S. Ct. 681, 689 (1986).[7]

## CONCLUSION

For the foregoing reasons, a writ of certiorari should be issued to review the judgment of the Court of Appeals in this case.

Respectfully submitted,

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March 31, 1987

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[7] In 1986, Mississippi passed a law that gradually will extend the geographic scope of permissible branching by state banks that meet certain conditions. Miss. Code Ann. § 81-7-1 *et seq.* (Supp. 1986). Accordingly, Deposit Guaranty has had its opportunity to change the law in the proper forum. However, the branching sought by Deposit Guaranty is still impermissible for Mississippi state banks.

# STATUTORY APPENDIX

## STATUTORY APPENDIX

The relevant portion of Section 36(c) of the McFadden Act, 12 U.S.C. § 36(c), provides as follows:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches . . . (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

Section 36(f) of the McFadden Act, 12 U.S.C. § 36(f), provides as follows:

> The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

Section 36(h) of the McFadden Act, 12 U.S.C. § 36(h), provides as follows:

> The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

Miss. Code Ann. § 81-7-5 (1972) provided as follows:

> Branch offices in certain cities—permission of state comptroller—branch offices may make loans.
>
> The state comptroller may permit banks to establish branch offices within the corporate limits of the

city where the bank is domiciled when the population is not less than ten thousand (10,000), and within the limits of the county wherein such bank is domiciled, and within the limits of any county adjacent to the county within which such bank is domiciled. No branch office shall be established in any town or city of less than three thousand five hundred (3,500) population where such town or city has one or more banks or branch banks in operation. Such offices shall not be considered branch banks within the meaning of this chapter, and no additional capital shall be required therefor. Such branch offices may make loans, and the notes or other evidence thereof, with all the collateral thereto belonging, may remain in said branch office of origin, or may be transmitted to and held in any other office of that individual banking system for collection. Such branch offices may keep such books as may be necessary or proper in the conduct of their business.

Miss. Code Ann. § 81-7-7 (1972) provided as follows:

Territorial limitations.

Branch banks may be established within a radius of one hundred miles of the parent bank, but no parent bank shall be permitted to establish more than fifteen branch banks; and no parent bank shall be permitted to establish a branch bank in any town or city of less than 3,100 population according to the last preceding federal census where such town or city has one or more banks in operation.

The relevant portions of Miss. Code Ann. § 81-7-7 (Supp. 1986), provide as follows:

Establishment of branch banks de novo or by merger or consolidation.

(1) For purposes of this section and Section 81-7-8, "branch bank de novo" or "branching de novo" refers to a branch established by the opening of

a new branch bank and includes a branch bank or branch office acquired from another bank without acquiring substantially all of the assets of the other bank.

(2) Subject to the restrictions contained in Section 81-7-8, a bank may establish:

(a) Branch banks de novo within the applicable radius from the parent bank, as specified in subsection (5) of this section, subject to compliance with the procedures set forth in Section 81-7-1;

. . . .

(5) For the purposes of this section, the applicable radius from the parent bank shall be:

(a) One hundred (100) miles, from July 1, 1986, through June 30, 1987;

(b) One hundred fifty (150) miles, from July 1, 1987, through June 30, 1988;

(c) Two hundred (200) miles, from July 1, 1988, through June 30, 1989;

(d) The geographical boundaries of the State of Mississippi, from and after July 1, 1989.